Supreme Court of the United States

OCTOBER TERM, 1936

No. 614

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA,
Appellee.

No. 618

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,
Appellant,

vs.

STATE OF MINNESOTA,
Appellee.

BRIEF OF APPELLANT OPPOSING THE MOTIONS OF APPELLEE TO DISMISS THE APPEALS IN THE TWO FOREGOING ACTIONS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENTS FROM WHICH SUCH APPEALS WERE TAKEN.

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Supreme Court of the United States

OCTOBER TERM 1936

No....647..

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

No...648..

IN THE MATTER OF THE PROCEEDINGS TO ENFORCE DELINQUENT MONEY AND CREDITS TAXES FOR 1934.

FIRST BANK STOCK CORPORATION,

Appellant,

vs.

STATE OF MINNESOTA,

Appellee.

BRIEF OF APPELLANT OPPOSING THE MOTIONS OF APPELLEE TO DISMISS THE APPEALS IN THE TWO FOREGOING ACTIONS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENTS FROM WHICH SUCH APPEALS WERE TAKEN.

Two appeals were taken by appellant to this Court. The first, No. 647, is from an order or judgment of the Supreme Court of the State of Minnesota reversing an order entered by the District Court of Hennepin County, Minnesota, denying the alternative motion of the appellee for amended findings or for a new trial. The second, No. 648, is from a judgment entered in the Supreme Court of the State of Minnesota upon a second appeal in the same action in favor of the appellee and against the appellant.

The Supreme Court of the State of Minnesota rendered three opinions in the case in which the two above appeals have been taken. One of these, following oral argument, was handed down June 19, 1936, and is reported in ... Minn. ..., 267 N. W. 526. The second opinion was rendered October 9, 1936, in denying appellant's petition for reargument, and is reported in ... Minn. ..., 269 N. W. 37. The third was rendered December 11, 1936, upon the second appeal to the Supreme Court of the State of Minnesota, and is reported in ... Minn. ..., 270 N. W. ....

STATEMENT OF THE CASE

The issues presented by these appeals are:- (1) Can more than one state constitutionally impose a property tax on state bank shares, and (2) if only one state can so tax, is it the state of incorporation of the state bank, on the one hand, or the state of domicile of the shareholder or the state within which the shares may have a business situs, on the other hand, which can impose the tax?

POSITION OF APPELLANT

The appellant contends that only one state can constitutionally impose a property tax on intangibles and that, in the case of state bank shares, it is the state of incorporation of the bank which can impose such tax, and not the state of domicile of the shareholder or of the business situs of the shares. Appellant further contends that it is not domiciled in the State of Minnesota and that the shares of stock it holds in state banks located without Minnesota have not acquired a business situs within the State of Minnesota.

STATEMENT OF FACTS

From the three opinions of the Minnesota Supreme Court the following salient facts appear: First Bank Stock Corporation, the appellant, is a Delaware corporation licensed to transact business in Minnesota. It owns a majority of the shares of various national and state banks all located in the Ninth Federal Reserve District. Among the stocks owned by it are those of certain state banks incorporated by, and doing business solely within, the States of North Dakota and Montana. Such states for the year 1934 imposed a property tax upon all of the shares of stock of such banks. *The statutes of both states expressly provide that shares of stock of banks incorporated therein are subject to tax at the location of the bank, and not elsewhere.* Compiled Laws of North Dakota (1913), as amended, Sections 2115 (1) to 2117. Revised Codes of Montana of 1921, Section 2067, as amended.

The State of Minnesota assessed a property tax for the year 1934 upon the appellant on account of such bank shares, pursuant to Sections 2337 to 2349, *Mason's Minnesota Statutes of 1927.*

ARGUMENT

The Supreme Court of the State of Minnesota held that the Minnesota statute, construed to impose a tax upon such bank shares, did not deprive appellant of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, saying (... Minn. ..., 267 N. W., p. 522):

> "• • • deciding the question strictly as one of Federal constitutional law, we hold that the taxation in Minnesota, as attempted under our Money and Credits Tax Law, of the involved stocks in the Montana and North Dakota banking corporations, is not a denial of due process. • • •"

The Supreme Court of Minnesota recognized that the issues presented in that Court involved an important principle of Federal constitutional law, and that the question was by no means a settled one, saying, in its second opinion (... Minn. ..., 269 N. W. 37):

> "It may not be necessary to add more to make plain our realization that the judgment of this court does not settle the matter. Deliberately we have tried to throw the question into bold relief. It may be necessary, as counsel suggest, to 'overrule' either *Corry vs. Baltimore*, 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556, or *Hawley vs. City of Malden*, 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, Ann. Cas. 1916C, 842. But the choice between them, if one must be made, is for the tribunal whose judgments are supreme in the field of federal constitutional law. There also must be answered 'the question expressly left undecided' in *Hawley vs. City of Malden, supra*, whether the chartering state may monopolize the right

to tax the shares of its corporations wherever owned, by declaring that its domain shall be the exclusive situs for such taxation."

Prior to the decision of the Supreme Court of Minnesota, the trial court had held the Minnesota statute, with respect to the shares of state banks in question, unconstitutional as a taking of appellant's property without due process of law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

The appellant respectfully submits that the three opinions of the Supreme Court of the State of Minnesota show, beyond a doubt, that these appeals involve a substantial question of Federal constitutional law. However, the appellant wishes briefly to summarize its contentions in order to demonstrate that the questions on which the decision of the cause depends are by no means unsubstantial.

The appellant contends that it is now the doctrine of this Court that only one state can constitutionally impose a property tax upon an intangible, and that in the case of shares of state banks such taxation can constitutionally be imposed only by the state of incorporation, and not by the state of domicile of the owner or of the business situs of the shares.

The appellant submits that the decision of this Court in *Wheeling Steel Corporation vs. Fox* (1936), 298 U. S. 193, 56 S. Ct. 773, 80 L. Ed. 809, establishes that intangibles enjoy an immunity against property taxation at more than one place. The opinion of this Court rests such doctrine on the recent inheritance tax cases. *Farmers Loan and T. Co. vs. Minnesota* (1930), 280 U. S. 294, 211; 50 S. Ct. 98, 74 L. Ed. 371, 374, 65 A. L. R. 1000; *Baldwin vs. Missouri* (1930), 281 U. S. 586, 50 S. Ct. 436, 74 L. Ed. 1056, 72 A. L. R. 1303; *Beidler vs. South Carolina Tax Commission* (1930),

282 U. S. 1, 51 S. Ct. 54, 75 L. Ed. 131; *First National Bank of Boston vs. Maine* (1932), 284 U. S. 312, 328, 329, 52 S. Ct. 174, 76 L. Ed. 313, 319, 320, 77 A. L. R. 1401.

The question remains, where the owner of the stock is domiciled in the state other than that of incorporation of the bank, or when the stock has a business situs in some other state, as to whether the state of domicile, the state of business situs or the state of incorporation is the one which constitutionally may impose the tax. It is true that, in the inheritance tax cases above cited, and in the Wheeling Steel Corporation case, *supra*, it has been held that the state which can impose the tax is the state of domicile or that of the business situs. We believe, however, for the reasons hereinafter set forth, that in the case of state bank shares, it is the state of incorporation, and not that of the domicile of the stockholder or of the business situs of the stock which can impose a property tax.

Jurisdiction to impose an *inheritance* tax depends on the state having jurisdiction of the transfer of the property at death, and such state is, of course, in the case of intangibles, the state of the domicile of the decedent. Jurisdiction to impose a *property* tax, on the other hand, depends upon the true situs of the property, *i. e.*, where it is habitually employed, and such jurisdiction must be consistent with the like jurisdiction of other states.

In the case at bar, the jurisdiction of Minnesota must be determined on a basis which is consistent with the jurisdiction of the states of incorporation of the banks. Here the states of incorporation have asserted jurisdiction to tax. The investment represented by the bank shares is in the states of incorporation. Those states give the essential protection to the bank shares which, in final analysis, is the ultimate basis of property taxation.

Practical considerations of wisdom, convenience, and justice require the conclusion that the state of incorporation alone has the power to tax. The following is a summary of the salient characteristics of state banks which we believe establish these contentions.

1. Some three-fourths of the states of the Union tax bank shares on an ad valorem basis, and this has been the universal and continued practice for generations. Revenue from this source has always been considered to be an integral part of the financial system of the state of incorporation. If the state of the domicile of a shareholder can tax the shares, and the state of incorporation cannot, the result will be a widespread dislocation of the revenue from this source from the locality in which the bank's operations are carried on to the domiciles of the shareholders.

2. Under Section 5219 of the Revised Statutes of the United States, U. S. Code, Title 12, Section 548, as amended, national bank shares may be taxed at a rate not in excess of the rate on other moneyed capital in the hands of individual citizens of the taxing state coming into competition with the business of national banks. Shares of state banks are certainly moneyed capital in competition with national banks. *First National Bank vs. Anderson* (1926), 269 U. S. 341, 348, 46 S. Ct. 135, 70 L. Ed. 295. If, then, Montana and North Dakota may not constitutionally tax shares of its banks held by non-residents, we submit that it cannot tax the shares of national banks located within its borders, as to do so would make the tax upon national bank shares discriminatory and invalid under Section 5219. *Iowa-Des Moines National Bank vs. Bennett* (1931), 284 U. S. 239, 52 S. Ct. 133, 76 L. Ed. 265. If, therefore, this Court holds that Minnesota, and not the state of incorporation, may tax the

shares here in question, the result will be to render invalid the laws of all the states (including Minnesota) which, at the present time, impose an ad valorem tax upon national bank shares.

3. Under the National Banking Act, the property of the bank itself cannot be taxed except its real estate. Revised Statutes, Section 5219; U. S. Code, Title 12, Sect. 548, as amended. Since the state bank must be able to compete with the national bank, the state is in fact, though not in law, prohibited from taxing state banks except as to real estate. The tax which the states impose upon bank shares is, therefore, their only method of obtaining revenue from a state bank. The tax on state bank shares, collected by the bank or a lien upon its assets, is, in fact, although not in law, a tax on the property of the bank and the only such tax which the state of incorporation can collect. If this right is taken away from the state of incorporation as to non-resident stockholders, the state which retains the ad valorem system of taxation is unable to obtain any tax revenue whatsoever from that portion of the property of the bank represented by the shares owned by non-residents. This would be a gross injustice to the state of incorporation which gives a far greater degree of protection and service to the economic entity made up of the bank and its shareholders than does the state of domicile of a non-resident shareholder.

4. Congress can deny to the states the power to tax national banks or their shares. It properly felt, however, that national banks should bear their just share of taxation. Accordingly, it desired to permit the taxation of national bank shares. In surveying the various methods of direct property taxation of bank shares, Congress deemed most equitable the system of taxation at the location of the bank

without regard to the domicile of the holder. In 1864, Congress incorporated in the National Banking Act, 13 Stat. 99, 112, permission to the states to impose an ad valorem tax on national bank shares at the location of the bank and forbade any other state to impose such a tax. This, then, is a declaration by Congress which has endured for seventy years that practical considerations of wisdom and convenience require taxation of bank shares in the state of incorporation and not elsewhere.

5. The Montana and North Dakota statutes cited above follow this universal practice of ad valorem states, impose a property tax upon bank shares at the location of the banks, and expressly provide that such shares shall not be taxed elsewhere. Thus, as stated in *First National Bank of Boston vs. Maine, supra,* page 331 of 284 U. S., selection of the state of incorporation is fortified by the statutes not only of Montana and North Dakota, but of all the other ad valorem states providing for taxation only at the location of the bank, and by the National Banking Act.

6. As above stated, the age old policy of the Federal Government and of the states has been to place state and national banks upon an equal footing with reference to taxation. In the case of national banks, shares may be taxed only at the location of the bank. If the state of domicile rather than the state of incorporation is selected as the state having jurisdiction to tax the shares of state banks, an element of inequality is introduced. A new element, the domiciles of its shareholders, will come into existence. In some instances the rate of taxation will be lower in the state of incorporation than in the states of domicile, which will induce the stockholders to nationalize such bank; in other instances the converse will be true and stockholders will

desire a state rather than a national bank. Thus a fortuitous circumstance will be added to those which now govern the choice between a state and a national bank and the policy of the United States and of the states with reference to equality will be thus far disrupted.

The localized character of a membership in the Minneapolis Chamber of Commerce was such that property taxation thereof was sustained in *Rogers vs. Hennepin County* (1916), 240 U. S. 184, 36 S. Ct. 265, 60 L. Ed. 594, even as to non-resident members. In *People ex rel. Whitney vs. Graves*, ... U. S. ... (decided by this Court on January 4, 1937, and not yet officially reported), income taxation by the State of New York of a profit arising from a New York Stock Exchange Membership owned by a resident of Massachusetts was sustained, because of the localized character of the membership. We submit that in the case of state bank shares there are present equally cogent reasons for holding them so localized in the state of incorporation as to be taxable there, and only there.

The case of *Corry vs. Baltimore* (1905), 196 U. S. 466, 25 S. Ct. 297, 49 L. Ed. 556, holds that the state of incorporation may tax non-resident stockholders with respect to the stock held by them. On the other hand, *Hawley vs. City of Malden* (1914), 232 U. S. 1, 34 S. Ct. 201, 58 L. Ed. 477, holds that the state of domicile of a stockholder of a foreign corporation may tax the stockholder's stock, but expressly leaves open the question of whether such state can tax where the state of incorporation by statute fixed the taxable situs of the stock within its borders. Since it is now firmly established that only one state can impose a property tax, this Court must overrule either *Corry vs. Baltimore* or *Hawley vs. City of Malden*, or at least determine the question expressly left undecided in the latter case.

As a second and separate reason for asking for a reversal of the decision of the Minnesota Supreme Court herein, the appellant contends that the shares of stock involved do not have a business situs in Minnesota and, hence, that taxation thereof by Minnesota is unconstitutional under the Fourteenth Amendment. However, the decision of this question requires a detailed examination of the facts. The record is not yet before this Court and the argument of appellant on this point is necessarily extensive. For these reasons, appellant here omits further mention of its argument on this branch of the question.

For the foregoing reasons, appellant respectfully submits that the questions presented by these appeals are not unsubstantial and that this Court should deny appellee's motions to dismiss the appeals, or, in the alternative, to affirm the decisions of the Supreme Court of the State of Minnesota.

Dated January 13, 1937.

Respectfully submitted,

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